plaintiff could recover on the check. *Montgomery Garage Co.* v. *Manufacturers' Liability Ins. Co.*, 109 Atl. 296 (N. J.).

For a discussion of the principles involved in this case, see NOTES, p. 76, *supra*.

BILLS AND NOTES — PURCHASERS FOR VALUE WITHOUT NOTICE — RESTRICTIVE INDORSEE AS A HOLDER IN DUE COURSE — EFFECT OF THE NEGOTIABLE INSTRUMENTS LAW. — The payee of six promissory notes made by the defendant was indebted to the plaintiff. As collateral security for this debt he delivered the defendant's notes to the X Bank indorsed: "Pay to the order of the X Bank for credit account of the plaintiff." Unknown to either the plaintiff or the X Bank the consideration given for the notes had failed. The notes were dishonored at maturity. Subsequently the X Bank indorsed them to the plaintiff, who sues the defendant as maker. *Held*, that the plaintiff cannot recover. *Gulbranson-Dickinson Co.* v. *Hopkins*, 175 N. W. 93 (Wis.).

A restrictive indorsement for the benefit or use of a third person passes the legal title to the indorsee as trustee for the third person. *Hook* v. *Pratt*, 78 N. Y. 371; THE NEGOTIABLE INSTRUMENTS LAW, § 36 (3). See NORTON, BILLS AND NOTES, 3 ed., §§ 62–64. Where a trustee takes legal title for a valuable consideration paid by the *cestui que trust*, the trustee is treated as a purchaser for value. See *Stokes* v. *Riley*, 121 Ill. 166, 171. Taking a negotiable instrument as collateral security for a pre-existing debt is a parting with value. See BRANNAN, THE NEGOTIABLE INSTRUMENTS LAW, 3 ed., § 25. Hence the X Bank was a holder in due course at common law, and the plaintiff could have sued in its own name since a transferee from a holder in due course has all the rights of his transferor, even though the transfer is made after maturity. *Chalmers* v. *Lanion*, 1 Campbell, 383. This result seems eminently just, but it is hard to reach under the Negotiable Instruments Law. Section 37, sub-section 2 gives an indorsee under a restrictive indorsement the right to bring "any action [on the instrument] that his indorser could bring." In the principal case the indorser could not have recovered from the defendant since there had been a failure of consideration; hence the X Bank was barred. And since "all subsequent indorsers acquire only the title of the first indorsee under the restrictive indorsement" the plaintiff cannot recover. THE NEGOTIABLE INSTRUMENTS LAW, § 37 (3). It is interesting to note that the late Dean Ames, to illustrate the injustice of section 37, stated hypothetically a set of facts almost identical with those in the principal case. See James Barr Ames, "The Negotiable Instruments Law — A Word More," 14 HARV. L. REV. 442, 446. And that the principal case destroys what little force there was to Judge Brewster's double-barrelled rejoinder that the case would never arise, and that equity would take care of it if it did. See Lyman Denison Brewster, "The Negotiable Instruments Law — A Rejoinder to Dean Ames," 15 HARV. L. REV. 26, 33.

CARRIERS — LIMITATION OF LIABILITY — EFFECT OF SHIPPER'S FAILURE TO READ VALUATION PROVISION IN UNIFORM EXPRESS RECEIPT. — Plaintiff shipped by express from one point in Michigan to another point in Michigan, a trunk, charges collect. The agent of the defendant gave him a receipt on the uniform blank, which he did not read, which declared that the liability of the express company was limited to fifty dollars, unless a greater value was declared and a corresponding increased rate paid. Plaintiff declared no excess valuation. The trunk was lost in transit. *Held*, that the plaintiff can recover full value. *Mosier* v. *American Railway Express Company*, 178 N. W. 81 (Mich.).

Carrier and shipper may stipulate, by a contract fairly entered into, that the loss, if any, shall not exceed a certain sum, at which the goods are valued. *Harris* v. *Packwood*, 3 Taunt. 264; *Hart* v. *Pennsylvania R. R. Co.*, 112 U. S.

331. Acceptance of a paper which purports to be a contract sufficiently indicates an assent to its terms, whatever they may be, and it is immaterial that they are in fact unknown. *Watkins* v. *Rymill*, 10 Q. B. D. 178. See *Upton* v. *Tribilcock*, 91 U. S. 45, 50. See also 1 WILLISTON ON CONTRACTS, § 90 a. Hence a shipper who takes a bill of lading or express receipt without objection, should be bound by the terms of the contract stated therein. *Hooker* v. *Boston & Maine Ry. Co.*, 233 U. S. 97; *Grace* v. *Adams*, 100 Mass. 505; *Hill* v. *Syracuse, etc. Ry. Co.*, 73 N. Y. 351. See *Parker* v. *Southeastern Ry. Co.*, 2 C. P. D. 416, 422. But this principle has been qualified in some cases where the receipt was not readily legible. *Richardson* v. *Rountree*, [1894] A. C. 217; *Blossom* v. *Dodd*, 43 N. Y. 264; *Verner* v. *Sweitzer*, 32 Pa. 208. And some courts have gone so far as to hold that there was no contract where the carrier did not prove actual assent. *Curtis* v. *United Transfer Co.*, 167 Cal. 112, 138 Pac. 726; *Chicago & Northwestern Ry. Co.* v. *Simon*, 160 Ill. 648, 43 N. E. 596; *Wichern* v. *United States Express Co.*, 83 N. J. L. 241, 83 Atl. 776. It is suggested that these limitations are dictated by a desire to protect the shipper, in a necessarily rapid transaction, in which he is at a disadvantage. They are, nevertheless, departures from strict principles of contract.

CONSTITUTIONAL LAW — INTERPRETATION OF THE SIXTEENTH AMENDMENT. — The plaintiff, a District Judge of the United States, sought to recover the amount of a tax paid by him, under protest, upon his total income, including his official salary. It was argued that such a tax was a reduction of his salary contrary to Art. III, § 1, of the Constitution. *Held*, that the tax be refunded. *Evans* v. *Gore*, 40 Sup. Ct. Rep. 550.

For a discussion of the principles involved in this case, see NOTES, p. 70, *supra*.

CONSTITUTIONAL LAW — POWERS OF THE JUDICIARY — STATUTE VALID IN ITS INCEPTION CAN LATER BE HELD CONFISCATORY BECAUSE OF ALTERED PRICE LEVEL. — The maximum rates that may be charged for gas in New York are fixed by statute. (LAWS 1905, c. 736; LAWS 1906, c. 125.) The United States Supreme Court in 1909 upheld the constitutionality of these rates. *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 198. For eight years gas was furnished thereunder at a profit. Since 1917, it is alleged, higher costs occasioned by the war have caused a deficit. The gas company asks that the statutory rate be declared void, as confiscatory. *Held*, that the court has jurisdiction to determine the question, since by reason of changed conditions an act, valid in its inception, may become unconstitutional, as confiscatory. *Bronx Gas & Electric Co.* v. *Public Service Commission*, 180 N. Y. Supp. 38 (App. Div.).

It is now customary for courts, in their decrees, to allow an opportunity for a practical test of the rate in question. *Darnell* v. *Edwards*, 244 U. S. 564; *Willcox* v. *Consolidated Gas Co.*, *supra*. But the language of such decrees does not contemplate the case of initial reasonableness, followed by later confiscatory effect. It has only recently been recognized that the judicial enforcement of such a rate will continue only as long as its reasonableness continues. Even if the rate, as originally approved, has shown itself reasonable for many years (as it did in the principal case), changing conditions will justify a refusal to apply it any longer. "In all such legislation, from the hour of its enactment, there thus inheres the seed of an infirmity which the future may develop." *Municipal Gas Co. of Albany* v. *Public Service Commission*, 225 N. Y. 89, 121 N. E. 772. See *Missouri* v. *Chicago, Burlington & Quincy R. R.*, 241 U. S. 533, 539. Conversely, where a rate is held confiscatory, the court may insert a provision in the decree that the State, or Commission, in interest may apply for a further decree, whenever it shall appear that, by reason of a change in